IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.2175 of 2000

Between:

Sri Virakthimutt rep. by Sri Abhinava Renuka Salankeswara

Swamiji, Peetadhipati of Virakthimutt, rep. by GPA Holder

Sri Panditha Mallikarjuna Sivacharya, Kalyanadurg,

Ananthapur District

..... PETITIONER

AND

1. The Manager, Sri Virakthimutt,

Kalyandurg, Ananthapur District.

2. The Assistant Commissioner of Endowments,

Ananthapur

3. The Commissioner of Endowments,

Andhra Pradesh, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari calling for all the connected records including the impugned proceedings of respondent No.3 in R.Dis.No.12/37890/98 dated 13.4.1999 and quash the same as illegal, improper, unjust, arbitrary and contrary to law and further declare Sri Abhinava Renuka Salankeswara Swamiji as Peetadhipati of the mutt.

Counsel for the Petitioner: MR.K.G.KRISHNA MOORTHY

Counsel for the Respondent Nos.1: MR.K.V.N.BHUPAL, Standing Counsel for Endowments

Counsel for the Respondent Nos.2 and 3: G.P. for Endowments

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.2175 OF 2000

ORDER:

Sri Abhinava Renuka Salankeswara Swamiji, a resident of Kalyanadurg, represented by his General Power of Attorney (GPA) holder, none other than his father, filed the present Writ Petition claiming himself to be peethadhipathi of Sri Virakthimutt, Kalyandurg. He seeks a Writ of Certiorari quashing the proceedings of third respondent dt.13.4.1999 and for a further declaration that Sri Abhinava Renuka Salankeswara Swamiji is duly appointed peetadhipati of Sri Virakthimutt.

The factual matrix is very simple. The mutt is a Veerasaiva mutt. The mathadhipathi is managing the property endowed to the mutt. According to the petitioner, the cashier of peethadhipati, Sri Basavalinga Swamy, is looking after the mutt, but later he resigned and left the village for his native place in Karnataka. The Department of Endowments did not take any steps to nominate the successor and therefore Veerasaiva community allegedly recognized the petitioner as peethadhipathi by resolution dt.15.1.1978. The petitioner, having approached the third respondent for recognition unsuccessfully, filed Writ Petition No.19663 of 1998. This Court disposed of the Writ Petition on 13.7.1998 directing the authorities to consider the case of the petitioner. Thereafter, after conducting due enquiry in obedience to the judgment of this Court in Writ Petition No.19663 of 1998, third respondent passed the impugned order rejecting the claim of the petitioner for peethadhipathi of the mutt. Assailing which, present Writ Petition is filed.

The Manager of Group Temples, Kalyandurg, filed counter affidavit in support of the impugned order. It is stated that the petitioner was Sarpanch and also married subsequently and therefore he is disqualified for being appointed as peethadhipathi. It is also denied that he was duly nominated/elected as peethadhipathi by people belonging to Veerasaiva community. It is further alleged that the deponent of the affidavit accompanying the Writ Petition who filed the Writ Petition as GPA of the petitioner died on 1.3.2000 and that the petitioner may not be interested in pursuing the case.

Learned counsel for the petitioner, Sri K.G.Krishna Murthy, strenuously relies on the resolution passed by Veerasaiva community as well as order of this Court in the earlier Writ Petition. He contends that when a peethadhipathi fails to nominate the successor, it is open for the Veerasaiva community to nominate another person as per the usage of the custom for peethadhipathi of Virakthimutt. **Per contra,** learned counsel for first respondent, Manager, Group Temples, Kalyandurg, Sri K.V.N.Bhupal, relies on Sections 51 to 54 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, the Act) in support of the contention that when mathadhipathi nominates his successor, succession cannot be based on usage or custom. He also strenuously disputes the contention of the learned counsel for the petitioner that there is a custom in Veerasaiva community to pass a resolution nominating the person to be mathadhipathi. Lastly he would urge that the petitioner was a Sarpanch before taking his claim and that he got married in December 2001 and therefore even if he had any legitimate expectation by reason of the resolution passed by Veerasaiva community, having married and begot children he incurs disqualification under Section 51(1)(g) of the Act.

Before considering the contentions raised by the respective counsel, it is necessary to notice some more facts as disclosed in the impugned order. After the judgment of this Court in W.P.No.19663 of 1998, dt.13.7.1998, third respondent referred the matter to the Assistant Commissioner of Endowments Department, Anantapur, to submit a detailed report. The latter submitted a comprehensive report to the effect that Sri Kari Basavalinga Swamy managed the mutt from the beginning and he nominated Sri Basavalinga Swamy of Kamara Village, Bellary District as successor. Sri Basavalinga Swamy of Kamara later nominated Sri Nijalinga Swamy @ Chinna Veera as mathadhipathi and executed a registered will deed dt.11.9.1998 as against proposal made by Veerasaiva Sangham of Kalyandurg in favour of the petitioner. The Assistant Commissioner also found that father of petitioner, presumably the deponent of the writ affidavit, sold away the lands belonging to the mutt and that the petitioner never thought of welfare of the mutt nor restrained his father from doing illegal activities against interest of the mutt. After considering the report of the Assistant Commissioner, the third respondent rejected the claim of the petitioner under Section 53 of the Act.

The submission of the learned counsel for the petitioner that as per the custom and usage of Veerasaiva community, mathadhipathi shall be nominated by Veerasaiva community cannot be accepted. No material is placed before this Court to accept the submission that there is such usage and custom in Veerasaiva community to nominate mathadhipathi of the mutt which was never started by the community. The factual matrix as above in this case would show that initially the mutt was started by Sri Kari Basavalinga Swamy, who managed the same from the beginning. Never in the history of the mutt there was any say of the Veerasaiva community in appointment or nomination of successor of Virakthimutt. In the absence of any such precedent, custom or usage cannot be inferred. Prevalence of custom or usage is a question of fact, which has to be proved by the person claiming the benefit of such custom by leading evidence and seek declaration from the Civil Court. In proceedings under Article 226 of the Constitution of India, this Court cannot give

such declaration. Further, as per Section 53 of the Act when a permanent vacancy of mathadhipathi occurs by reason of death or resignation or removal of mathadhipathi, the person next entitled to succeed according to the rule of succession laid down by the founder or according to the usage and custom, and where no such usage or custom exists, according to the law of succession. In this case Sri Basavalinga Swamy of Kamara nominated Sri Nijalinga Swamy as mathadhipathi. This leads to an inference that as per the practice, incumbent mathadhipathi always nominates his successor. In this case the impugned order also refers to Will executed by Sri Basavalinga Swamy and therefore petitioner cannot be said to have any right or legitimate expectation for being recognized as mathadhipathi.

Section 51 of the Act empowers the Commissioner of Endowments to remove mathadhipathi, who incurs certain disqualification. Sub-section (1) of Section 51 of the Act is relevant and reads as under.

> 51. Removal of Mathadhipathi:- (1) The Commissioner may *suo motu* or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he,--
>
> a. is of unsound mind;
>
> b. is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;
>
> c. has ceased to profess the Hindu religion or the tenets of the math;
>
> d. has been sentenced for any offence involving moral turpitude, such sentence not having been reversed;
>
> e. is guilty of breach of trust, or mis-appropriation in respect of any of the properties of the math;
>
> f. commits persistent and wilful default in the exercise of his powers or performance of his functions under this Act;
>
> g. violate any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;
>
> h. leads an immoral life; or
>
> i. fails or ignores to implement the principles setout in Clause (17) of Section 2.

Even if a person is nominated or appointed as mathadhipathi, if such a person violates restrictions imposed or practice enjoined on mathadhipathi, such as celibacy and renunciation, he cannot be appointed nor continued as mathadhipathi. The petitioner, as stated in the affidavit of first respondent, married in December 2001 and also got two children. Therefore, he cannot be recognized as mathadhipathi. While considering the right of the petitioner, this Court cannot ignore the important event which has direct bearing on the merits of the case. Therefore, on the ground that petitioner is married and got two children, it is must be held that he is

not a fit person for being appointed or recognized as mathadhipathi.

The Writ Petition is devoid of merits and is accordingly dismissed.

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21.6.2005 (V.V.S.RAO, J)

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To

1. The Manager, Sri Virakthimutt, Kalyandurg, Ananthapur District.

2. The Assistant Commissioner of Endowments, Ananthapur.

3. The Commissioner of Endowments, Andhra Pradesh, Hyderabad

4. 2 CCs to G.P. for Endowments, High Court Bldgs., Hyderabad (OUT)

5. Two C.D.Copies.